

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 2, 73, 74 and 90 of the)	
Commission's Rules to Permit New York City)	ET Docket No. 03-158
Metropolitan Area Public Safety Agencies)	MB Docket No. <u>03-159</u>
to Use Frequencies at 482-488 MHz)	

REPORT AND ORDER

Adopted: March 31, 2004

Released: April 9, 2004

By the Commission: Chairman Powell issuing a statement.

1. In this Report and Order, we amend our rules and reallocate on a permanent basis television Channel 16 (482-488 MHz) in the New York City Metropolitan Area to the land mobile service for public safety communications.¹ We take this action in furtherance of our ongoing efforts to facilitate effective public safety communications and to promote interoperability between public safety agencies.

I. BACKGROUND

2. In 1995, the Commission conditionally waived Parts 2 and 90 of its rules to allow the temporary assignment of frequencies in the 482-488 MHz band to public safety agencies in the New York City Metropolitan Area. As a result of this action, public safety use of the frequencies was permitted for a period of at least five years or until a television broadcast station in the New York City Metropolitan Area initiates use of Channel 16 for advanced television broadcast operations, whichever was longer.² In that 1995 *Waiver Order*, the Commission found that the public safety agencies in New York had "an urgent and immediate need for additional spectrum capacity for public safety communications."³ The Commission believed that the use of TV Channel 16 would provide necessary relief and would allow for the development of interoperability of communications among the affected public safety agencies.⁴ Finally, the Commission concluded that the spectrum relief could be concluded without affecting then-existing television operations or plans for the implementation of advanced television.⁵

¹ The amended rules are attached in Appendix B.

² *Waiver of Parts 2 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz on a Conditional Basis*, 10 FCC Rcd 4466 (1995) (1995 *Waiver Order*)

³ *Id.* at 4468

⁴ *Id.*

⁵ *Id.*

3. On July 10, 2003, we issued a *Notice of Proposed Rulemaking (NPRM)*⁶ seeking comment on a proposal by the Police Department of the City of New York (NYPD) regarding the allocation of Channel 16 in the New York City Metropolitan Area.⁷ Specifically, the NYPD asserted, on behalf of itself and the other public safety agencies comprising the New York Metropolitan Advisory Committee (NYMAC) (collectively Petitioners), that there is a need to reallocate TV broadcast Channel 16 in the New York City Metropolitan Area to the land mobile service for public safety communications on a permanent basis.⁸ In support of their request, Petitioners state that the use of TV Channel 16 plays a critical role in the ability of the NYPD and other NYMAC agencies to engage in effective public safety communications.⁹ They also state that they have made enormous investments in planning, constructing and implementing a wireless infrastructure for voice and data which is integral to their ability to provide enhanced emergency response.¹⁰ According to the Petition, the NYPD alone has invested over \$50 million in the infrastructure for its operations on TV Channel 16, including transmitters, antennas, repeaters and approximately 25,000 portable and mobile radios. The Petitioners state that the New York City Fire Department, Corrections Department, Sanitation Department, Department of Information and Technology, Department of Parks and Recreation, and the Health and Hospitals Corporation Police all depend on TV Channel 16 as the core of their wireless communications capability. The Petition notes that public safety agencies in Suffolk County, New York and Nassau County, New York also rely on TV Channel 16. According to the Petition, these entities, as well as the New York Transit Authority and other area public safety agencies, have invested millions of dollars in equipment to utilize TV Channel 16.

4. The Petitioners contend that the substantial investments made by the various public safety agencies in the use of TV Channel 16 could be jeopardized if a party petitioned the Commission to assign TV Channel 16 for digital television (DTV) use in the Hudson River Valley.¹¹ Petitioners also express concerns regarding the potential for interference from low power television operation.¹² In order to forestall these types of threats, the Petitioners seek to have TV Channel 16 in the New York City Metropolitan Area permanently allocated as part of the land mobile service for use as a public safety communications band.

5. In the *NPRM*, the Commission sought comment on the Petitioner's proposal and on the technical consequences of the reallocation. Seventeen parties filed comments in response to the *NPRM*.¹³ Thirteen of those parties endorsed the proposal, while four raised concerns about all or part of it. The

⁶ *Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz*, ET Docket No. 03-158 and MB Docket No. 03-159, *Notice of Proposed Rulemaking*, 15 FCC Rcd 15,014 (2003) (*NPRM*).

⁷ As in the *1995 Waiver Order*, for purposes of this proceeding, the New York Metropolitan Area includes the five boroughs of New York City, Nassau County, Suffolk County, Westchester County, including the cities of Yonkers and New Rochelle, and Bergen County, New Jersey.

⁸ Letter to the Honorable Michael Powell, Chairman, Federal Communications Commission from John E. Gilmartin, Deputy Chief, The City of New York Police Department (December 5, 2002). Attached to the letter is a "Report of the Police Department of the City of New York," which is also dated December 5, 2002 (Report). We have treated the Report as a petition for rulemaking (Petition).

⁹ Report, *supra* note 6, at 2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ A complete list of commenters is attached as Appendix A.

four parties expressing concerns about the proposed reallocation all stated that they needed additional technical data to evaluate the Petitioners' plan. The Petitioners countered that this additional data included information that was sensitive and that the release of that information could present a security threat. The Petitioners requested that they only be required to provide the technical data pursuant to a protective order. Therefore, on December 4, 2003, the Media Bureau issued a protective order directing that the sensitive information be provided, outlining who would be permitted to receive it, and setting forth rules for its use.¹⁴ Of the parties requesting the additional information, only one party filed supplemental comments based on its review of that information.¹⁵ The issues and concerns expressed by the parties that did not endorse the proposal are discussed below.

II. DISCUSSION

A. Access to Spectrum by Public Safety Agencies in the New York Metropolitan Area

6. The terrorist acts of September 11, 2001, and the ongoing terrorist threats to national security have made clear the need for public safety personnel to have the most reliable access possible to sufficient telecommunications capacity during an emergency. A reliable telecommunications system that will not be overwhelmed in a crisis is fundamental to the ability of first responders and medical personnel to do their jobs in an emergency. In the New York City Metropolitan Area, Channel 16 has been an integral part of the emergency agencies' telecommunications system since the Commission's temporary authorization for its use in 1995 and is a key element in their plans for the future.

7. Although none of the commenters dispute the need for public safety agencies to have access to reliable communications, K Licensee and Mullaney question whether the reallocation of Channel 16 is necessary to meet that need. In their comments and reply comments, the Petitioners explain that Channel 16 is critical both to the existing communications infrastructure and to the future expansion of the system. As discussed further below, Petitioners argue that they need to expand their spectrum usage and that there is no other spectrum available for their use in the New York Metropolitan Area.

8. In its comments, K Licensee relies on a report by McKinsey & Company (McKinsey) that it argues undermines Petitioners' purported need for more accessible spectrum.¹⁶ Our review of that report, however, shows that it supports the need for continued use of Channel 16 to meet current communications operations and future expanded operations by the emergency agencies. The McKinsey Report states that

¹⁴ *Order Adopting Protective Order*, ET Docket 03-158 and MB Docket 03-159, DA 03-3880, released December 4, 2003 (MB).

¹⁵ K Licensee, Inc. (K Licensee) is the licensee of WEBR-CA, which is a channel 17 Class A low power television station with a community of license for Manhattan, NY. (WEBR-CA was previously licensed under call sign W17BM; its situation was discussed in the *1995 Warver Order* under that call sign.) K Licensee requested additional information and filed responsive supplemental comments, which are addressed below. Mullaney Engineering (Mullaney), in its comments, also requested additional information but did not renew its request for that information pursuant to the terms of the protective order. Catholic Views Broadcasts, Inc. (Catholic Views) stated in its comments that it needed additional engineering information in order to evaluate Petitioners' proposal, subsequently requested that information pursuant to the protective order, and received the information, but it did not file supplemental comments addressing the additional data. Tribune Television Company (Tribune) also filed a request for the confidential information pursuant to the protective order, but did not file supplemental comments. The United Telecom Council (UTC), which supported the reallocation in its original comments, requested and was granted access to the confidential information pursuant to the protective order but did not file any responsive supplemental comments. Therefore, there are no issues raised by these commenters that need to be addressed further.

¹⁶ See *Improving NYPD Emergency Preparedness and Response*, McKinsey & Company, August 19, 2002 (McKinsey Report), attached as Exhibit A to the Comments of K Licensee.

the emergency response groups have generally used their existing communications network, which includes Channel 16 as an integral part, exceptionally well. The McKinsey Report, however, does identify some problems with the communications infrastructure and recommends some changes and upgrades. Among the problems cited was an over-reliance on cell phones by some emergency responders, which has sometimes caused system overloads that prevent call completion. Because of such system overloads and other infrastructure damage, the McKinsey Report concludes that the current communications system employed by the emergency responders cannot be considered to be a reliable communications resource. The McKinsey Report also states more specifically that the Fire Department's communications system is inadequate and needs improvement. It recommends additional investment in wireless infrastructure by the Fire Department and by other agencies and greater investment in interoperability links between agencies. Rather than support K Licensee's argument against the reallocation, we find that the McKinsey Report supports the Petitioners' contention that they need to continue and expand their use of Channel 16. Our review of the McKinsey Report and of Petitioners' comments has convinced us that we were correct in our tentative conclusion that use of Channel 16 on a permanent basis will provide immediate and necessary relief to the emergency response agencies and will allow for the continued development of interoperability in the New York Metropolitan Area, the specific needs that the McKinsey Report indicates must be addressed by the New York public safety agencies.¹⁷

9. K Licensee also claims that the Petitioners have failed to demonstrate that no other spectrum is available to meet their needs. In the Technical Report attached to their proposal, the Petitioners include a frequency analysis (Frequency Analysis) to support their position that there is no other spectrum available to them within those bands that have been designated for public safety use. In support, the Petitioners include a frequency analysis of the technical parameters facing public safety entities in the New York City Metropolitan Area. The Frequency Analysis was prepared by Vogel Consulting Group, which conducted its own search of all existing land mobile frequencies in the New York City Metropolitan Area and contacted the Southern New York State Frequency Coordinator. The Frequency Coordinator also concluded that no other channels were available.

10. We believe that the Petitioners' analysis demonstrates that the only unassigned spectrum in the 150-160 MHz band is not usable due to the close proximity of existing adjacent channels. In the Frequency Analysis, the Petitioners state that there are no frequencies available in either the 450-454 MHz band or the 460-465 MHz band that would satisfy the needs of the agencies because there is inadequate bandwidth available and no manufacturer provides equipment for the narrow bandwidth that is available. The Frequency Analysis also discusses the UHF T-Band pools (in Channels 14 and 15) and determines that all of the 25 kHz channels and most of the 12.5 kHz channels are assigned. Further, the Petitioners demonstrate that the 12.5 kHz channels that are unassigned are unusable due to adjacent channel spacing. Likewise, they assert that the 6.25 kHz channels in that band are not usable due to the closeness of the adjacent channels. The Petitioners also state that all of the channels in the 806-821, 821-824, 851-866, and 866-869 MHz band are in use. Finally, the Petitioners explain that immediate and future uses of the new Public Safety Band at 764-776/794-806 are prohibited in the New York City Metropolitan Area by current television station operations. Although K Licensee is skeptical of Petitioners' Frequency Analysis, it does not offer any evidence or arguments that dispute the conclusions made in the Frequency Analysis concerning public safety access to spectrum in the New York

¹⁷ In its comments, Mullaney argues that the reallocation is unnecessary because of the ultimate 700 MHz band allocation to public safety. See ET Docket 97-157. Mullaney overlooks the fact that our rules still allow broadcast stations to continue to operate on those channels, making it unlikely that they will be available for public safety operations before the end of the DTV transition.

Metropolitan Area. We reject K Licensee's argument and find that the Petitioners have adequately demonstrated that there is no alternative spectrum available for their use.¹⁸

B. Section 303 Authority

11. The frequencies at issue in this case - 482-488 MHz - are currently allocated for the broadcast television service in the Table of Frequency Allocations in Section 2.106 of our rules. In their original request, Petitioners sought relief under Section 337(c) of the Communications Act of 1934, as amended. That provision directs the Commission to "waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services" when certain specified conditions are met. Petitioners, however, are already operating on Channel 16 pursuant to a waiver. The arguments Petitioners made in their request and their subsequent comments make clear that they are not seeking any further waiver of the rules, but instead are seeking a permanent reallocation of television Channel 16 in New York City to public safety use. By its own terms, Section 337(c) is a waiver provision and not a reallocation provision. Therefore, as discussed in the *NPRM*, we will proceed via Section 303 of the Communications Act, by which we can permanently reallocate the spectrum to fulfill the needs of all qualified public safety entities in New York City and delete the current allocation of that spectrum to broadcasting. We do not need to analyze whether Petitioners meet the requirements for a Section 337(c) waiver, but we do need to determine whether the reallocation is in the public interest. In light of the continuing public safety needs of the New York Metropolitan Area and the shortage of spectrum in that area, we believe that there is a significant public interest basis for making the reallocation. Accordingly, we delete the current allocation of television Channel 16 in the New York City area and reallocate that spectrum to land mobile for use by public safety agencies. In making that reallocation, however, we must also consider the rights of existing licensees and the public interest in making sure those licensees are able to continue operation and to serve their audiences. We do not intend that this reallocation will impair or prevent the use of authorized facilities by existing licensees.

C. Impact on Operations of TV Channel 17 in New York City

12. In the *NPRM*, we discussed the historical relationship between the Petitioners and the licensee of WEBR-CA, Channel 17, New York City. The cooperation between these parties regarding interference avoidance goes back to the time of the temporary waiver. Several years ago, K Licensee and Petitioners entered into a Memorandum of Understanding (MOU) pursuant to which they agree to advise each other at least 60 days in advance of any change, alteration or modification to their existing facilities that may adversely affect or cause interference to the other party's communications system(s).¹⁹ The MOU that governs the resolution of interference disputes between the parties was incorporated into the Commission's Order establishing the Class A television service.²⁰ K Licensee seemed to claim in its initial comments that the MOU only applied to a displacement application that was denied on August 19, 2002. However, the *Class A Order* which incorporated the MOU does not make any reference to a displacement proceeding. Indeed, the *Class A Order* made the MOU part of WEBR-CA's application to

¹⁸ K Licensee also contends that we must examine whether the Petitioners are making the most efficient use of their spectrum before proceeding with the reallocation, but cites no authority for its position and no facts to indicate that the Petitioners are not being efficient.

¹⁹ See Letter to Roy Stewart, Chief, Mass Media Bureau from Vincent M. Mansfield, Deputy Chief, Commanding Officer, Office of Technology and Systems Development, New York Police Department, and Young Dae Kwon, President, K Communications, dated March 27, 2000, attached as Appendix A to the Reply Supplemental Comments of the Petitioners.

²⁰ *Establishment of Class A Television Service, Report and Order*, 15 FCC Rcd 6355, 6390 (2000) (*Class A Order*); *Report and Order on Reconsideration*, 16 FCC Rcd 8244, 8274 (2001).

acquire Class A status and the licensee has never before indicated to the Commission that it does not consider itself bound by the MOU. Therefore, we can only conclude that K Licensee erred when it claimed not to be bound by the MOU and that the parties are still obligated to resolve their interference concerns pursuant to it. For their part, Petitioners' make clear that they intend to fulfill their obligations under the MOU and to resolve all disputes according to its terms. We fully expect our licensees to continue their history of cooperation under the MOU.

13. As we stated in the *NPRM*, we affirm that the notice requirements and the protections afforded to WEBR-CA in the *1995 Waiver Order* will continue in place. In their comments, the Petitioners' reiterate their commitment to maintaining the *status quo* in regard to their relationship with K Licensee. In its comments, K Licensee raises technical concerns regarding specific aspects of the reallocation. These concerns are related to the specific design of any expansion or modification of the system and how equipment used pursuant to that design will affect WEBR-CA's operations. The rules changes discussed below address those concerns. Furthermore, pursuant to the MOU, K Licensee will continue, as in the past, to be advised of and have an opportunity to examine any changes to the Petitioners' operations that may impact WEBR-CA's operations. We expect that any potential conflicts will be resolved cooperatively pursuant to the MOU, as in the past.

D. Impact on Operations of Channel 17 in Philadelphia

14. Tribune is the licensee of WPHL-TV, which is a full service NTSC Channel 17 station licensed to serve Philadelphia, Pennsylvania. WPHL-DT was assigned Channel 54 for its DTV operation. Channel 54 is an out-of-the-core channel and it is likely that WPHL will revert back to Channel 17 for DTV operation at the end of the DTV transition.²¹ Tribune is concerned that this reallocation will not provide full protection to the potential maximized use of its DTV facilities on Channel 17. Tribune's concerns are based on speculation about its possible future service and the possible future use of Channel 16 by Petitioners. This reallocation is granted based on the existing limits on the land mobile use of Channel 16 that are reflected in the *1995 Waiver Order* that established the temporary waiver. We have also considered Tribune's current operations in our decision. To the extent that either party changes its operations in the future, there are appropriate procedures in the Commission's licensing process in which they can raise their concerns. We expect the parties to cooperate fully in attempting to resolve any future conflicts. The Petitioners have a demonstrated history of cooperating with their neighbors in resolving conflicts and we expect that approach to continue.

15. Tribune also suggests that, rather than making a permanent allocation of the spectrum, we continue its temporary status and sunset the Petitioners' use of Channel 16 three to six months after the completion of the digital television transition. We believe Tribune's sunset proposal is impractical in terms of meeting the spectrum needs of the public safety agencies in the New York Metropolitan Area and that it would create a tremendous financial and logistical burden on the public safety agencies. We also believe that such a forced transition could jeopardize public safety in the long term by causing confusion at the time of transition and in the short term by discouraging investment in public safety services. Therefore, we reject Tribune's proposal.

E. Other Matters

16. K Licensee claims that it has been denied due process, been denied its rights under the Administrative Procedure Act, and been denied an opportunity to participate meaningfully in this proceeding. The record reveals, however, these claims to be utterly unfounded. According to the record, K Licensee was advised in August 2002, that the NYPD planned to seek permanent authority to operate

²¹ After the DTV transition has concluded, the "core" channels for television will be channels 2-36 and channels 38-51. See *Advanced Television Systems, Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998).

on Channel 16.²² A copy of the Petitioners' proposal was served on K Licensee May 16, 2003.²³ The *NPRM* was released on July 10, 2003, and appeared in the Federal Register on August 22, 2003, establishing an initial comment date of September 22, 2003. Subsequently, K Licensee requested access to the unredacted version of Petitioners' proposal and received it. Whether or not K Licensee agrees with Petitioners' contentions or with the conclusions of this Commission on this matter, K Licensee has had ample opportunity to participate "meaningfully" in this proceeding and to make its objections known. We reject its claims regarding violation of due process and violation of its rights under the Administrative Procedure Act.

17. The Petitioners have alleged that uncertainty exists as to whether Class A, low power television (LPTV) and TV translator stations must protect land mobile stations operating on Channel 16 in New York, New York. Petitioners assert that although Section 73.6020 of the rules specifically states that Class A TV stations must not cause interference to land mobile operations on Channel 16 in New York City,²⁴ the rule does not specifically refer to LPTV, TV translators and TV booster stations. They question whether such facilities must also provide the same protection. Because our rules require LPTV and TV translator stations to protect existing land mobile uses,²⁵ we believe it is clear they must provide such protection to Petitioners.²⁶

18. In the *NPRM*, we proposed to carry over the technical limitations from the temporary waiver to the permanent reallocation. The Petitioners do not object to this proposal and neither do any commenters. Accordingly, those limitations are incorporated into the comprehensive revisions of the rules that are discussed below.²⁷

²² See Comments of K Licensee at page 7.

²³ See Letter of Cornelius C. Walsh, Lieutenant, Police Department of the City of New York, to K Licensee, dated May 16, 2003.

²⁴ 47 C.F.R. § 73.6020. ("An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in §74.709 of this chapter. In addition to the protection requirements specified in §74.709(a) of this chapter, Class A TV stations must not cause interference to land mobile stations operating on Channel 16 in New York, NY.")

²⁵ 47 C.F.R. § 74.703(e). ("Low power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operations.")

²⁶ We remind licensees of Wireless Assist Video Devices (WAVD) operating under Part 74, Subpart H – Low Power Auxiliary devices, that WAVD operation is on a secondary, non-interference basis to TV broadcast and land mobile operations, on TV channels 8-12, 14-36 and 38-51. See Sections 74.803 and 74.870. Thus, WAVD operation on TV Channel 17 (488-494) MHz in the eastern part of Suffolk County should be avoided, to avert interference to public safety land mobile operations on adjacent TV Channel 16. WAVD operation on TV Channels 15 and 16 in this area are already prohibited by Section 74.780.

²⁷ In the *1995 Waiver Order*, the Commission stated that it contemplated that annual reports would be made by a joint committee of New York City broadcast interests and public safety agencies on frequency coordination. *1995 Waiver Order*, 10 FCC Rcd at 4467. As a result of the reallocation of Channel 16 we are eliminating this reporting requirement. In their comments, Petitioners' ask that Yonkers and New Rochelle be included in the reallocation. This request is moot because we are including Westchester County, New York, which includes both of these cities and which was included in the original waiver, in the reallocation.

F. Amendments to Parts 2, 73, 74, and 90 of our Rules

19. In order to implement the decision discussed above, we are amending Section 2.106 of our Rules, the Table of Frequency Allocations (Table).²⁸ The 482-488 MHz band is allocated to: 1) the land mobile service on a primary basis in four urbanized areas, which are specified in Table footnote NG66; 2) the fixed service on a primary basis for licensees in the land mobile service that are regulated as Commercial Mobile Radio Service (CMRS) providers in three of the four urbanized areas; and 3) the fixed and mobile services on a primary basis in the Gulf of Mexico, as specified in footnote NG114.²⁹ In all other areas of the United States, the 482-488 MHz band is allocated to the broadcasting service on an exclusive basis for use by TV channel 16.³⁰ We are revising footnote NG66 to add the 482-488 MHz band to the list of frequency bands that are available for use by the land mobile service in the following areas: New York City, Nassau, Suffolk, and Westchester Counties in New York State; and Bergen County, New Jersey. We are limiting the use of this primary land mobile service allocation to eligibles in the Public Safety Radio Pool.³¹ In addition, we are revising Sections 73.623(e), 73.6020, and 74.709(a) of our Rules to conform to this allocation change. These changes will protect Public Safety facilities, which now are authorized by waiver, from new broadcast television facilities, both full service and low power, for which applicants could otherwise apply.³² In order to clarify the existing requirements for the protection of land mobile operations in three urbanized areas, we are also correcting omissions in two rule sections. Specifically, we are adding entries for TV channels 15 and 16 in Cleveland and for TV channels 16 and 17 in Detroit to Section 73.623(e), and we are adding TV channel 16 to the Los Angeles entry in Section 74.709(a). In Section 90.303 of the Rules, we are adding a new paragraph (c) in order to make the 482-488 MHz band available for Public Safety licensing and to codify certain requirements from the 1995 *Waiver Order* that are necessary in order to protect the broadcast television service.³³

²⁸ See 47 C.F.R. § 2.106 at page 537 of the Table of Frequency Allocations in the non-Federal Government Table for the 470-512 MHz band

²⁹ See 47 C.F.R. § 2.106, footnotes NG66, NG114.

³⁰ In revised footnote NG66, below, we clarify that the band 470-512 MHz is allocated to the broadcasting service on an exclusive basis, except in the listed areas where specified TV channels have been reallocated for other uses. We revise footnote NG66 in this manner because footnotes NG115, NG128, and NG149 do not limit the broadcasting service, instead these footnotes provide broadcasters with additional flexibility. Specifically, footnote NG115 permits broadcasters to use the band 470-512 MHz on a non-interference basis for wireless microphones. (In addition, motion picture producers may use this spectrum on a non-interference basis for wireless assist video devices.) Footnote NG128 authorizes TV broadcasters to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes. Footnote NG149 provides a primary fixed service allocation for licensees of television broadcast stations who desire to offer subscription television operations in accordance with 47 C.F.R. Part 73.

³¹ See 47 C.F.R. § 90.20(a) for the eligibility requirements to hold authorizations in the Public Safety Radio Pool.

³² Currently, there is not an allotment for TV channel 16 use in the New York City metropolitan area. See 47 C.F.R. §§ 73.606 and 73.622. However, the Petitioners are concerned that a party may petition the Commission to assign TV channel 16 for DTV use in the Hudson River Valley. The Petitioners also express concern regarding the potential for interference from low power television operations.

³³ Specifically, the existing material in 47 C.F.R. § 90.303 is re-numbered as paragraphs (a) and (b) and a new paragraph (c) is added. In paragraph (c), we are requiring that base and mobile stations be located within the reallocated area, except that mobile stations may go outside of the reallocated area if they stay within 30 miles of the Empire State Building. We are also adding the height and power requirements that are necessary to protect reception of nearby TV stations operating on channel 16. In addition, the staff has corrected the horizontal coordinates of the Empire State Building to 40° 44' 54.4" N, 73° 59' 8.4" W using the NAD83 datum published by the National Geodetic Survey. See www.ngs.noaa.gov, survey control station PID KU3602. The staff has also

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20. We are also merging Table footnotes NG114 and NG127 into Table footnote NG66, which now contains all uses that may be provided by Part 22 and Part 90 licensees in the 470-512 MHz band on a primary basis. We believe that these editorial amendments will assist the public in better understanding the allocation status of the 470-512 MHz band. Specifically, the structure of footnote NG66 has been revised as follows. In the footnote's introductory paragraph, we expressly state that the Table entry for the primary allocation to the broadcasting service is limited in geographic scope. Paragraph (a) contains the 11 urbanized areas and frequency bands listed in footnote NG66 where the land mobile service may be used by Part 22 and Part 90 licensees on a primary basis.³⁴ We also take this opportunity to update footnote NG66 by adding entries denoting that Part 22 and 90 licensees in Cleveland may use frequencies in the 470-482 MHz band (TV channels 14 and 15) and that Part 22 and 90 licensees in Detroit may use frequencies in the 476-488 MHz band (TV channels 15 and 16).³⁵ These cities and frequency bands are currently listed in Section 90.303 of our Rules, except that the entry for Cleveland erroneously lists channel 16 and omits channel 15.³⁶ We likewise amend Section 90.303 to specify that Part 90 licensees may use frequencies in the 470-482 MHz band (TV channels 14 and 15) in Cleveland urbanized area. In revised footnote NG66, paragraph (a)(1) states that the Commission has granted licensees in the land mobile service that are regulated as CMRS providers the additional flexibility to offer fixed wireless services on their assigned spectrum on a co-primary basis with mobile services.³⁷ Paragraph (a)(2) discusses the existing availability of the 482-488 MHz band (TV channel 16) for Public Safety use in the Los Angeles urbanized area and the new availability of this frequency band for Public Safety use in New York City and in four outlying counties.³⁸ Paragraph (b) contains the allocations from footnote NG114 concerning Part 22 and 90 use of the 476-494 MHz band (TV channels 15-17) in the Gulf of Mexico.³⁹ Because these fixed and mobile allocations and their status are not explicitly stated in footnote NG114, we also take this opportunity to clarify this situation based on Parts 22 and 90 of our Rules.⁴⁰ Paragraph (c) contains the allocation from footnote NG127, which states that the 488-494 MHz band is allocated exclusively to the fixed service in Hawaii.⁴¹ Paragraph (d) points the reader to Parts 22 and 90 of our Rules for additional requirements on the use of these fixed and mobile

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replaced the NAD27 coordinates for WNEP-TV (Facility ID 73318) with the NAD83 coordinates contained in the Commission's Antenna Structure Database (ID 1043700), which are 41° 10' 58.0" N, 75° 52' 20.0" W.

³⁴ See 47 C.F.R. § 2.106, footnote NG66.

³⁵ As currently stated in notes 4 and 5 to the table in Section 90.303, these channels are not available until further order from the Commission. 47 C.F.R. § 90.303, notes 4 and 5.

³⁶ 47 C.F.R. § 90.303.

³⁷ Such use was authorized in the *CMRS Flexibility Order*. See *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Services*, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8965 (1996) at para. 2.

³⁸ See 47 C.F.R. § 2.106, footnote NG66 for the existing availability of TV channel 16 in the Los Angeles urbanized area.

³⁹ See 47 C.F.R. § 2.106, footnote NG114. Because this allocation has been merged into footnote NG66, we are deleting footnote NG114 from our Rules.

⁴⁰ See, e.g., 47 C.F.R. § 22.1025 and § 90.315.

⁴¹ See 47 C.F.R. § 2.106, footnote NG127. Because this allocation has been merged into footnote NG66, we are deleting footnote NG127 from our Rules.

service allocations.⁴² These changes permit us to remove footnotes NG114 and NG127 from our Rules and to revise footnote NG66 to read as follows:

NG66 The band 470-512 MHz (TV channels 14-20) is allocated to the broadcasting service on an exclusive basis throughout the United States and its insular areas, except as described below:

(a) In the urbanized areas listed in the table below, the indicated frequency bands are allocated to the land mobile service on an exclusive basis for assignment to eligibles in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool, except that:

(1) Licensees in the land mobile service that are regulated as Commercial Mobile Radio Service (CMRS) providers may also use their assigned spectrum to provide fixed service on a primary basis.

(2) The use of the band 482-488 MHz (TV channel 16) is limited to eligibles in the Public Safety Radio Pool in or near (i) the Los Angeles urbanized area; and (ii) New York City; Nassau, Suffolk, and Westchester Counties in New York State; and Bergen County, New Jersey.

Urbanized area	Bands (MHz)	TV channels
Boston, MA.	470-476, 482-488.....	14, 16
Chicago, IL-Northwestern Indiana.....	470-476, 476-482.....	14, 15
Cleveland, OH.....	470-476, 476-482.....	14, 15
Dallas-Fort Worth, TX....	482-488.....	16
Detroit, MI.....	476-482, 482-488.....	15, 16
Houston, TX.....	488-494.	17
Los Angeles, CA.....	470-476, 482-488, 506-512.....	14, 16, 20
Miami, FL.....	470-476.....	14
New York, NY-Northeastern New Jersey	470-476, 476-482, 482-488.....	14, 15, 16
Philadelphia, PA-New Jersey.....	500-506, 506-512.....	19, 20
Pittsburgh, PA.....	470-476, 494-500.....	14, 18
San Francisco-Oakland, CA.....	482-488, 488-494.....	16, 17
Washington, D.C.-Maryland-Virginia	488-494, 494-500.....	17, 18

(b) In the Gulf of Mexico offshore from the Louisiana-Texas coast, the band 476-494 MHz (TV channels 15-17) is allocated to the fixed and mobile services on a primary basis for assignment to eligibles in the Public Mobile and Private Land Mobile Radio Services.

(c) In Hawaii, the band 488-494 MHz (TV channel 17) is allocated exclusively to the fixed service for use by common carrier control and repeater stations for point-to-point inter-island communications only.

(d) The use of these allocations is further subject to the conditions set forth in 47 C.F.R. parts 22 and 90.

III. CONCLUSION

21. The terrorist attacks of September 11, 2001, underscored the increasing importance of public safety radio systems, which provide the primary telecommunication service for first responders in emergency situations. In the New York Metropolitan Area, the use of TV Channel 16 by the NYPD and NYMAC has been an essential part of this telecommunications service since the Commission's temporary authorization in 1995. This use of Channel 16 has successfully co-existed with television operations since that time. We believe that the public interest will be served by changing the temporary authorization to a permanent reallocation so as to facilitate the public safety agencies' ability to make long term plans based on the availability of Channel 16, to expand their investment in the spectrum, and to use the spectrum to protect public safety and well-being. By reallocating Channel 16 to public safety use in the New York City area, we believe that we will be providing permanent necessary spectrum

⁴² See 47 C.F.R. Parts 22 and 90.

capacity to area public safety agencies while continuing to facilitate the increasingly-important interoperability of public safety communications

IV. ADMINISTRATIVE MATTERS

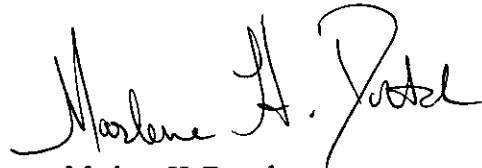
22. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

23. This Report and Order does not adopt information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(j), 157(a), 301, 303, 308 and 309(j), this Report and Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch", is written over a horizontal line.

Marlene H. Dortch
Secretary

APPENDIX A**Comments**

APCO

Catholic Views Broadcasts, Inc.

International Association of Chiefs of Police

K Licensee, Inc.

International Association of Chiefs of Police

Major Cities Chiefs

Motorola, Inc.

Mullaney Engineering, Inc.

National Public Safety Telecommunications Council

New York City Transit Authority

Police Department of the City of New York and the New York Metropolitan Advisory
Committee (NYPD/NYMAC)

Public Safety Wireless Network

Region 8-700 MHz Public Safety Planning Committee

Region 8-800 MHz Regional Planning Update Committee

Tribune Television Company

United States Conference of Mayors

United Telecom Council

Reply Comments

K Licensee, Inc.

NYPD/NYMAC

United Telecom Council

Supplemental Comments

K Licensee , Inc.

Reply to Supplemental Comments

NYPD/NYMAC

APPENDIX B: FINAL RULES

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. parts 2, 73, 74, and 90 as follows:

**PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

- 2 Section 2.106, the Table of Frequency Allocations, is amended as follows:

- a. Revise page 37.

- b. In the list of non-Federal Government (NG) footnotes, revise footnote NG66; and remove footnotes NG114 and NG127.

§ 2.106 Table of Frequency Allocations.

The revisions read as follows:

* * * * *

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile	470-585 FIXED MOBILE BROADCASTING	470-608	470-512 FIXED LAND MOBILE BROADCASTING	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	5 292 5 293			NG66 NG115 NG128 NG149	
	512-608 BROADCASTING	5 291 5 298		512-608 BROADCASTING	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	5 297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350		Personal (95)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	5.149 5.305 5 306 5.307	US246		
	614-806 BROADCASTING Fixed Mobile	610-890 FIXED MOBILE 5 317A BROADCASTING	614-890	614-698 BROADCASTING	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				NG115 NG128 NG149	
				698-764 FIXED MOBILE BROADCASTING NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
				NG115 NG128	
				764-776 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

NG66 The band 470-512 MHz (TV channels 14-20) is allocated to the broadcasting service on an exclusive basis throughout the United States and its insular areas, except as described below:

(a) In the urbanized areas listed in the table below, the indicated frequency bands are allocated to the land mobile service on an exclusive basis for assignment to eligibles in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool, except that:

(1) Licensees in the land mobile service that are regulated as Commercial Mobile Radio Service (CMRS) providers may also use their assigned spectrum to provide fixed service on a primary basis.

(2) The use of the band 482-488 MHz (TV channel 16) is limited to eligibles in the Public Safety Radio Pool in or near (i) the Los Angeles urbanized area; and (ii) New York City; Nassau, Suffolk, and Westchester Counties in New York State; and Bergen County, New Jersey.

Urbanized area	Bands (MHz)	TV channels
Boston, MA.....	470-476, 482-488.....	14, 16
Chicago, IL-Northwestern Indiana.....	470-476, 476-482.....	14, 15
Cleveland, OH.....	470-476, 476-482.....	14, 15
Dallas-Fort Worth, TX.....	482-488.....	16
Detroit, MI.....	476-482, 482-488.....	15, 16
Houston, TX.....	488-494.....	17
Los Angeles, CA.....	470-476, 482-488, 506-512.....	14, 16, 20
Miami, FL.....	470-476.....	14
New York, NY-Northeastern New Jersey.....	470-476, 476-482, 482-488.....	14, 15, 16
Philadelphia, PA-New Jersey.....	500-506, 506-512.....	19,20
Pittsburgh, PA.....	470-476, 494-500.....	14, 18
San Francisco-Oakland, CA.....	482-488, 488-494.....	16, 17
Washington, D.C.-Maryland-Virginia.....	488-494, 494-500.....	17, 18

(b) In the Gulf of Mexico offshore from the Louisiana-Texas coast, the band 476-494 MHz (TV channels 15-17) is allocated to the fixed and mobile services on a primary basis for assignment to eligibles in the Public Mobile and Private Land Mobile Radio Services.

(c) In Hawaii, the band 488-494 MHz (TV channel 17) is allocated exclusively to the fixed service for use by common carrier control and repeater stations for point-to-point inter-island communications only.

(d) The use of these allocations is further subject to the conditions set forth in 47 C.F.R. parts 22 and 90.

PART 73 – RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

4. The table in Section 73.623(e) is amended by revising the entry for New York and by adding entries for Cleveland and Detroit to read as follows:

§ 73.623 DTV applications and changes to the DTV allotments.

(e) ***

City	Channels	Latitude	Longitude
**	*	*	*
Cleveland, OH.....	14, 15.....	41° 29' 51.2".....	081° 41' 49.5"
**	*	*	*
Detroit, MI.....	15, 16.....	42° 19' 48.1".....	083° 02' 56.7"
**	*	*	*
New York, NY.....	14, 15, 16.....	40° 45' 06".....	073° 59' 39"
**	*	*	*

* * * * *

5. Section 73.6020 is amended by revising the last sentence to read as follows:

§ 73.6020 Protection of stations in the land mobile radio service.

* * * In addition to the protection requirements specified in § 74.709(a) of this chapter, Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York City; Nassau, Suffolk, and Westchester counties in New York State; and Bergen County, New Jersey.

PART 74---EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

6. The authority citation for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 307, and 554.

7. Section 74.709(a) is amended by revising the entries for Los Angeles and New York City in the table to read as follows:

§ 74.709 Land Mobile station protection.

(a) * * *

City	Channels	Coordinates	
		Latitude	Longitude
**	*	*	*
Los Angeles, CA.....	14, 16, 20.....	34° 03' 15".....	118° 14' 28"
**	*	*	*
New York, NY.....	14, 15, 16.....	40° 45' 06".....	073° 59' 39"
**	*	*	*

* * * * *

PART 90---PRIVATE LAND MOBILE RADIO SERVICES

8. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

9. Section 90.303 is amended to read as follows:

§ 90.303 Availability of frequencies.

(a) Frequencies in the band 470-512 MHz are available for assignment as described below. Note: coordinates are referenced to the North American Datum 1983 (NAD83).

(b) The following table lists frequency bands that are available for assignment in specific urban areas. The available frequencies are listed in § 90.311 of this part.

Urbanized area	Geographic center		Bands (MHz)	TV channels
	North latitude	West longitude		
Boston, MA.....	42° 21' 24.4"	71° 03' 23.2"	470-476, 482-488	14, 16
Chicago, IL ¹	41° 52' 28.1"	87° 38' 22.2"	470-476, 476-482	14, 15
Cleveland, OH ²	41° 29' 51.2"	81° 41' 49.5"	470-476, 476-482	14, 15
Dallas/Fort Worth, TX.....	32° 47' 09.5"	96° 47' 38.0"	482-488	16
Detroit, MI ³	42° 19' 48.1"	83° 02' 56.7"	476-482, 482-488	15, 16
Houston, TX.....	29° 45' 26.8"	95° 21' 37.8"	488-494	17
Los Angeles, CA ⁴	34° 03' 15.0"	118° 14' 31.3"	470-476, 482-488, 506-512	14, 16, 20
Miami, FL.....	25° 46' 38.4"	80° 11' 31.2"	470-476	14
New York/N.E. NJ.....	40° 45' 06.4"	73° 59' 37.5"	470-476, 476-482, 482-488	14, 15, 16
Philadelphia, PA.....	39° 56' 58.4"	75° 09' 19.6"	500-506, 506-512	19, 20
Pittsburgh, PA.....	40° 26' 19.2"	79° 59' 59.2"	470-476, 494-500	14, 18
San Francisco/Oakland, CA	37° 46' 38.7"	122° 24' 43.9"	482-488, 488-494	16, 17
Washington., DC/MD/VA...	38° 53' 51.4"	77° 00' 31.9"	488-494, 494-500	17, 18

¹ In the Chicago, IL, urbanized area, channel 15 frequencies may be used for paging operations in addition to low power base/mobile usages, where applicable protection requirements for ultrahigh frequency television stations are met.

² Channels 14 and 15 are not available in Cleveland, OH, until further order from the Commission.

³ Channels 15 and 16 are not available in Detroit, MI, until further order from the Commission.

⁴ Channel 16 is available in Los Angeles for use by eligibles in the Public Safety Radio Pool.

(c) The band 482-488 MHz (TV Channel 16) is available for use by eligibles in the Public Safety Radio Pool in the following areas: New York City; Nassau, Suffolk, and Westchester counties in New York State; and Bergen County, New Jersey. All part 90 rules shall apply to said operations, except that:

(1) Location of stations. Base stations shall be located in the areas specified in paragraph (c). Mobile stations may operate throughout the areas specified in paragraph (c) and may additionally operate in areas not specified in paragraph (c) provided that the distance from the Empire State Building (40° 44' 54.4" N, 73° 59' 8.4" W) does not exceed 48 kilometers (30 miles).

(2) Protection criteria. In order to provide co-channel television protection, the following height and power restrictions are required:

(i) Except as specified in paragraph (c)(2)(ii), base stations shall be limited to a maximum effective radiated power (ERP) of 225 watts at an antenna height of 152.5 meters (500 feet) above average terrain (AAT). Adjustment of the permitted power will be allowed provided it is in accordance with the "169 kilometer Distance Separation" entries specified in Table B in 47 C.F.R. § 90.309(a) or the "LM/TV Separation 110 miles (177 km)" curve in Figure B in 47 C.F.R. § 90.309(b).

(ii) For base stations located west of the Hudson River, Kill Van Kull, and Arthur Kill, the maximum ERP and antenna height shall be limited to the entries specified in Table B in 47 C.F.R. § 90.309(a) or in Figure B in 47 C.F.R. § 90.309(b) for the actual separation distance between the base station and the transmitter site of WNEP-TV in Scranton, PA (41° 10' 58.0" N, 75° 52' 20.0" W).

(iii) Mobile stations shall be limited to 100 watts ERP in areas of operation extending eastward from the Hudson River, Kill Van Kull, and Arthur Kill and to 10 watts ERP in areas of operation extending westward from the Hudson River.

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit New York City Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz

This Nation's public safety community faces some of the most challenging times in history as it works tirelessly to protect our citizens and secure our homeland. One of the Commission's highest priorities is to assist public safety, especially first responders, in meeting these challenges by providing them with access to spectrum that can help save lives.

Today's item does just that. The permanent reallocation of Ch. 16 in the New York Metropolitan Area to public safety use will facilitate effective public safety communications, enhance communications between public safety agencies and allow the New York Metropolitan Area public safety community do what they do best—protect the citizens of and visitors to New York.

This Commission will continue to try and meet the needs of the public safety community and use one of our citizens' most valuable public resources—spectrum—to help save lives.